

AMENDED IN SENATE FEBRUARY 22, 2016

SENATE BILL

No. 876

Introduced by Senator Liu

January 14, 2016

An act to add Part 2.2 (commencing with Section 53.8) to Division 1 of the Civil Code, ~~and to amend Section 11135 of,~~ and to add Section 11139.2 to, the Government Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

SB 876, as amended, Liu. Homelessness.

Existing law provides that no person shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

~~This bill would expand those provisions to also include exclusion or discrimination based upon homeless status. The bill would prohibit cities, counties, cities and counties, and municipal agencies that receive state funds from enacting or enforcing a law that bans resting in a public space, as defined. The bill would afford persons experiencing homelessness the right to use public spaces without discrimination based on their housing status and describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions, including the right to use and to move freely in public spaces, the right to rest in public spaces and to protect oneself from the elements, the right to eat in any public space in which having food is not prohibited, and the right to perform religious observances in public spaces, as~~

specified. ~~Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program. The bill would state the intent of the Legislature that these provisions be interpreted broadly so as to prohibit policies or practices that are discriminatory in either their purpose or effect.~~

The bill would authorize a person whose rights have been violated pursuant to these provisions to enforce those rights in a civil action in which the court may award the prevailing party injunctive and declaratory relief, restitution, damages, statutory damages of \$1,000 per violation, and fees and costs.

The bill would also require all applicants for the United States Department of Housing and Urban Development's Continuum of Care Homeless Assistance Program to annually provide to the Department of Housing and Community Development's Division of Housing Policy Development a copy of its application for funding from the United States Department of Housing and Urban Development that includes the organization's response to the application question regarding steps that its community is taking to reduce criminalization of homelessness. ~~Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the United States Department of Housing and
- 4 Urban Development's report to Congress, 115,738 people were
- 5 estimated to be homeless in California in 2014, a rate that is
- 6 unprecedented following a deep and prolonged economic recession,
- 7 a severe shortage of safe and affordable housing, a failed veteran

1 and civilian mental health system, and a diminished social safety
2 net.

3 (b) According to the United States Department of Education,
4 284,086 schoolchildren were known to have experienced
5 homelessness in the 2013–14 school year.

6 (c) Homelessness is an independent risk factor for a number of
7 illnesses, making people more susceptible to increased health
8 problems due to high stress, sleep deprivation, unsanitary
9 surroundings, lack of access to hygiene facilities, and a myriad of
10 other situational stressors experienced by people without stable
11 housing. Subsequently, people who are chronically homeless are
12 more medically frail and three to four times more likely to die
13 prematurely than their housed counterparts.

14 (d) Throughout California, local governments have enacted
15 ordinances that make it illegal to rest or receive nourishment in
16 public spaces.

17 (e) Ending homelessness in California will require significant
18 state and federal resources and there is ample evidence that policies
19 that invest in ending homelessness, rather than criminalizing and
20 marginalizing people who are experiencing homelessness,
21 adequately balance the needs of all parties: community residents,
22 government agencies, businesses, and men and women who are
23 experiencing homelessness.

24 (f) Passing this act will not reduce homelessness, but neither
25 will local ordinances that criminalize homelessness. Instead,
26 ordinances that criminalize homelessness result in increased
27 incarceration rates and financial indebtedness of people who simply
28 have no means of support and prolong homelessness by making
29 it more difficult for people to secure housing, employment, and
30 medical care. Criminalization policies further marginalize men
31 and women who are experiencing homelessness, fuel inflammatory
32 attitudes, and may even unduly restrict constitutionally protected
33 liberties.

34 (g) That is why, on September 18, 2015, the United States
35 Department of Housing and Urban Development included in the
36 annual Notice of Funding Availability for the Continuum of Care
37 funding competition, provisions that would award additional points
38 to any application that could include steps the community is taking
39 to reduce criminalization of homelessness.

1 (h) It is also why, on August 6, 2015, the United States
2 Department of Justice submitted a rare statement of interest in a
3 United States District Court in opposition to the criminalization
4 of people who are homeless, calling it cruel and unusual
5 punishment to punish someone for a crime with the potential for
6 imprisonment and a violation of constitutional rights.

7 (i) While these ordinances apply to all residents, they
8 disproportionately impact people without homes, who have no
9 private place to rest or seek nourishment, and are often selectively
10 applied by law enforcement to people based upon their appearance
11 or an assumption of homelessness.

12 (j) In practice, these ordinances deprive persons experiencing
13 homelessness and those who may be perceived as homeless of a
14 safe and legal place to rest and seek nourishment, which adversely
15 impacts their health and well-being.

16 (k) Sleep deprivation impairs cognitive processes and puts one
17 at risk for obesity, heart disease, heart attack, heart failure, irregular
18 heartbeat, high blood pressure, stroke, diabetes, and depression.
19 People who are homeless suffer from sleep deprivation and, absent
20 a place to rest, they suffer it more frequently.

21 (l) Because current practices have denied the right to adequate
22 legal representation to people cited or arrested while resting or
23 sharing food, homeless persons are often denied relief or damages
24 through the courts.

25 (m) Both the federal government, through its Interagency
26 Council on Homelessness, and the United Nations have recognized
27 that discrimination and criminalization violate a homeless person's
28 human rights and have called upon state and local governments to
29 cease enactment and enforcement of those laws.

30 (n) Homelessness and the increasing criminalization of
31 homelessness and discrimination against those experiencing
32 homelessness are widespread throughout California and are matters
33 of statewide concern.

34 (o) Section 1 of Article I of the California Constitution provides
35 that "[a]ll people are by nature free and independent and have
36 inalienable rights. Among these are enjoying and defending life
37 and liberty, acquiring, possessing, and protecting property, and
38 pursuing and obtaining safety, happiness, and privacy," without
39 qualification as to whether or not a person is, or appears to be,
40 homeless.

(p) Subdivision (a) of Section 7 of Article I of the California Constitution provides that “[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws ... ”

(q) Concordant with this fundamental belief, a person should not be subject to discrimination based on his or her income, housing status, or ability or desire to appear housed. Therefore, it is the intent of the Legislature in enacting this legislation to protect the rights of all Californians, regardless of their housing status, and ameliorate the adverse effects caused by the criminalization of homelessness on our communities and our citizens.

(r) Decriminalization of rest allows municipal governments to redirect resources from local enforcement activities to activities that address the root causes of homelessness and poverty.

SEC. 2. Part 2.2 (commencing with Section 53.8) is added to Division 1 of the Civil Code, to read:

PART 2.2. HOMELESS PERSONS

53.8. For purposes of this part, the following definitions shall apply:

(a) “Homeless persons,” “homeless people,” or “persons experiencing homelessness” means those individuals or members of families who lack a fixed, regular, and adequate nighttime residence, including people defined as homeless using the criteria established in the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.

~~(b) “Motor vehicle” means a motor vehicle as defined in Section 415 of the Vehicle Code.~~

~~(c)~~

(b) “Public space” means any property that is owned by a government entity or any property upon which there is an easement for public use and that is held open to the public, including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks.

~~(d) “Recreational vehicle” means a recreational vehicle as defined in Section 18010 of the Health and Safety Code.~~

~~(e)~~

(c) “Rest” means the state of not moving, holding certain postures that include, but are not limited to, sitting, standing, leaning, kneeling, squatting, sleeping, or lying.

53.81. (a) ~~Persons~~—*It is the intent of the Legislature that this section be interpreted broadly so as to prohibit policies or practices that are discriminatory in either their purpose or effect.*

(b) Persons experiencing homelessness shall be permitted to use public space in the ways described in this section at any time that the public space is open to the public without discrimination based upon their housing status, and without being subject to criminal, civil, or administrative penalties. Permitted use of the public space include, but are not limited to, all of the following:

(1) Free movement without restraint.

(2) Sleeping or resting, and protecting oneself from the elements while sleeping or resting in a nonobstructive manner.

(3) Eating, sharing, accepting, or giving food in a space in which having food is not otherwise generally prohibited.

(4) Praying, meditating, worshiping, or practicing religion.

~~(b)~~

(c) Nothing in this section shall prevent law enforcement from enforcing laws to protect the right of people to use the ~~sidewalk~~, sidewalk pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

~~(e)~~

(d) Nothing in this section shall prevent law enforcement from enforcing the Penal Code, except subdivision (e) of Section 647 of the Penal Code, so far as it prohibits rest.

53.82. (a) Any person whose rights have been violated pursuant to this part may enforce those rights in a civil action.

(b) The court may award appropriate injunctive and declaratory relief, restitution for loss of property or personal effects and belongings, actual damages, compensatory damages, exemplary damages, statutory damages of one thousand dollars (\$1,000) per violation, and reasonable attorney’s fees and costs to a prevailing party.

~~SEC. 3. Section 11135 of the Government Code is amended to read:~~

~~11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, disability,~~

1 or homeless status, be unlawfully denied full and equal access to
2 the benefits of, or be unlawfully subjected to discrimination under,
3 any program or activity that is conducted, operated, or administered
4 by the state or by any state agency, is funded directly by the state,
5 or receives any financial assistance from the state. Notwithstanding
6 Section 11000, this section applies to the California State
7 University.

8 (b) With respect to discrimination on the basis of disability,
9 programs and activities subject to subdivision (a) shall meet the
10 protections and prohibitions contained in Section 202 of the federal
11 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
12 and the federal rules and regulations adopted in implementation
13 thereof, except that if the laws of this state prescribe stronger
14 protections and prohibitions, the programs and activities subject
15 to subdivision (a) shall be subject to the stronger protections and
16 prohibitions.

17 (c) (1) As used in this section, “disability” means any mental
18 or physical disability, as defined in Section 12926.

19 (2) The Legislature finds and declares that the amendments
20 made to this act are declarative of existing law. The Legislature
21 further finds and declares that in enacting Senate Bill 105 of the
22 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),
23 it was the intention of the Legislature to apply subdivision (d) to
24 the California State University in the same manner that
25 subdivisions (a), (b), and (c) already applied to the California State
26 University, notwithstanding Section 11000. In clarifying that the
27 California State University is subject to paragraph (2) of
28 subdivision (d), it is not the intention of the Legislature to increase
29 the cost of developing or procuring electronic and information
30 technology. The California State University shall, however, in
31 determining the cost of developing or procuring electronic or
32 information technology, consider whether technology that meets
33 the standards applicable pursuant to paragraph (2) of subdivision
34 (d) will reduce the long-term cost incurred by the California State
35 University in providing access or accommodations to future users
36 of this technology who are persons with disabilities, as required
37 by existing law, including this section, Title II of the federal
38 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
39 and following), and Section 504 of the Rehabilitation Act of 1973
40 (29 U.S.C. Sec. 794).

~~(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.~~

~~(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.~~

~~(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.~~

~~(e) As used in this section, “sex” and “sexual orientation” have the same meanings as those terms are defined in subdivisions (r) and (s) of Section 12926.~~

~~(f) As used in this section, “race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability” includes a perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.~~

~~(g) As used in this section, “genetic information” has the same definition as in paragraph (2) of subdivision (e) of Section 51 of the Civil Code.~~

~~(h) As used in this section, “homeless status,” or “people experiencing homelessness” means those individuals or members of families who lack a fixed, regular, and adequate nighttime residence.~~

~~(i) As used in this section, “public space” means any property that is owned by any government entity or any property upon which there is an easement for public use and that is held open to the public, including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks.~~

1 (j) ~~As used in this section, “rest” means the state of not moving,~~
2 ~~holding certain postures that include, but are not limited to, sitting,~~
3 ~~standing, leaning, kneeling, squatting, sleeping, or lying. Rest also~~
4 ~~includes the act of protecting oneself from the elements, in a~~
5 ~~nonobstructive manner.~~

6 (k) ~~The Legislature finds and declares that people with a~~
7 ~~homeless status lack a private space to rest, and, therefore, they~~
8 ~~must rest in a public space.~~

9 (l) ~~It is the intent of the Legislature to protect the rights of all~~
10 ~~people, including those experiencing homelessness, in order to~~
11 ~~diminish the adverse effects of municipalities engaged in violating~~
12 ~~the fundamental right to rest.~~

13 (m) ~~In order to ensure full and equal access to the benefits and~~
14 ~~protections afforded by this section against discrimination in the~~
15 ~~administration of any program or activity conducted, operated, or~~
16 ~~administered by the state or any state agency funded directly by~~
17 ~~the state, or that receives any financial assistance from the state,~~
18 ~~no city, county, city and county, or municipal agency that receives~~
19 ~~state funds shall enact or enforce a law that bans resting in a public~~
20 ~~space, as defined in Part 2.2 (commencing with Section 53.8) of~~
21 ~~Division 1 of the Civil Code.~~

22 ~~SEC. 4.~~

23 *SEC. 3.* Section 11139.2 is added to the Government Code, to
24 read:

25 11139.2. To improve monitoring of discrimination based upon
26 housing status and violations of ~~Section 11135, Part 2.2~~
27 *(commencing with Section 53.8) of Division 1 of the Civil Code,*
28 and to ensure that people who are experiencing homelessness are
29 not unlawfully denied full and equal access to the benefits of
30 state-funded programs or assistance, or unlawfully subjected to
31 discrimination, all applicants for the United States Department of
32 Housing and Urban Development’s Continuum of Care Homeless
33 Assistance Program shall annually provide to the Department of
34 Housing and Community Development’s Division of Housing
35 Policy Development a copy of its application for funding from the
36 United States Department of Housing and Urban Development
37 that includes the organization’s response to the application question
38 regarding steps that its community is taking to reduce
39 criminalization of homelessness.

1 ~~SEC. 5.~~

2 *SEC. 4.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

O